

1 WRIGHT, FINLAY & ZAK, LLP

2 Christopher A.J. Swift, Esq.

3 Nevada Bar No. 11291

4 Lindsay D. Robbins, Esq.

5 Nevada Bar No. 13474

6 7785 W. Sahara Ave., Suite 200

7 Las Vegas, Nevada 89117

8 (702) 475-7964; Fax: (702) 946-1345

9 [cswift@wrightlegal.net](mailto:cswift@wrightlegal.net)

10 [lrobbins@wrightlegal.net](mailto:lrobbins@wrightlegal.net)

11 *Attorneys for Defendants, U.S. Bank National Association, as Trustee for MASTR Asset Backed  
12 Securities Trust 2006-HE5 Mortgage Pass-Through Certificates, Series 2006-HE5 (incorrectly identified  
13 in Plaintiff's Complaint as "US Bank, National Association"), Western Progressive – Nevada, Inc.; and  
14 Ocwen Loan Servicing, LLC*

15 **UNITED STATES DISTRICT COURT  
16 DISTRICT OF NEVADA**

17 ALFRED CLARK,

18 Plaintiff,

19 vs.

20 NEW CENTURY MORTGAGE COMPANY;  
21 US BANK, NATIONAL ASSOCIATION;  
22 BARKLAYS CAPITAL REAL ESTATE INC.;  
23 WESTERN PROGRESSIVE – NEVADA, INC.;  
24 OCWEN LOAN SERVICING, LLC; DOES I-X  
25 inclusive; and ROE CORPORATIONS I-X  
26 inclusive,

27 Defendants.

28 Case No.: 2:18-cv-02241-APG-PAL

**MOTION TO STAY DISCOVERY**

29 COMES NOW Defendants, U.S. Bank National Association, as Trustee for MASTR Asset  
30 Backed Securities Trust 2006-HE5 Mortgage Pass-Through Certificates, Series 2006-HE5 (incorrectly  
31 identified in Plaintiff's Complaint as "US Bank, National Association") (hereinafter "U.S. Bank"),  
32 WESTERN PROGRESSIVE – NEVADA, INC. (hereinafter "Western Progressive"); and OCWEN  
33 LOAN SERVICING, LLC (hereinafter "Ocwen") (collectively, the "Defendants"), by and through their  
34 counsel of record, Christopher A.J. Swift, Esq. and Lindsay D. Robbins, Esq. of the law firm of Wright,

1 Finlay & Zak, LLP, and hereby moves pursuant to Fed. R. Civ. P. 26(c) for a protective order staying  
2 discovery pending a ruling on Defendant BARCLAYS CAPITAL REAL ESTATE INC. (hereinafter  
3 "Barclays") Motion to Dismiss [ECF No. 8] and Defendants' Joinder thereto [ECF No. 9].

4 DATED this 15<sup>th</sup> day of February, 2019.

5  
6 WRIGHT, FINLAY & ZAK, LLP

7 /s/ Lindsay D. Robbins

8 Christopher A.J. Swift, Esq.

9 Nevada Bar No. 11731

10 Lindsay D. Robbins, Esq.

11 Nevada Bar No. 13474

12 7785 W. Sahara Ave., Suite 200

13 Las Vegas, Nevada 89117

14 *Attorneys for Defendants, U.S. Bank National Association,  
as Trustee for MASTR Asset Backed Securities Trust 2006-  
HE5 Mortgage Pass-Through Certificates, Series 2006-HE5  
(incorrectly identified in Plaintiff's Complaint as "US Bank,  
National Association"), Western Progressive – Nevada,  
Inc.; and Ocwen Loan Servicing, LLC*

15  
16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 This is Plaintiff Alfred Clark's (hereinafter "Plaintiff") third attempt at initiating baseless  
19 litigation against Defendants. On September 7, 2016, Plaintiff filed his first complaint, Case No. 2:16-cv-  
20 02113-GMN-GWF, alleging Wrongful Foreclosure, Violation of 15 U.S.C. § 1692, and Violation of  
21 Public Law §§ 95-109, 806, 807, 808, 812, and 813 (hereinafter "First Complaint"). According to the  
22 dismissal filed by Clark, the First Complaint was dismissed on April 18, 2017 because the Court refused  
23 to grant Clark *in pro forma* status. Plaintiff filed his second action on April 17, 2017 and alleged the same  
24 causes of action in Case No. 2:17-cv-01065-JAD-VCF (hereinafter "Second Complaint"). U.S. Bank  
25 responded with a Motion to Dismiss and requested that the court stay discovery while the Motion to  
26 Dismiss was pending. The court granted the Motion to Stay Discovery on October 4, 2017, stating that  
27

28 Dismiss was pending. The court granted the Motion to Stay Discovery on October 4, 2017, stating that

1 due to the “high likelihood that the complaint will be significantly limited in scope if not eliminated when  
2 the pending motion to dismiss is decided”, there was good cause to stay discovery. *See Order Granting*  
3 *Motion to Stay*, attached hereto as **Exhibit A**. A few months later on March 16, 2018, the court also  
4 granted U.S. Bank’s Motion to Dismiss Plaintiff’s Second Complaint in its entirety finding that  
5 Plaintiff’s wrongful foreclosure claim was premature and his FDCPA claim was time-barred. *See Order*  
6 *Granting Motion to Dismiss*, attached hereto as **Exhibit B**.

7 Plaintiff initiated the instant matter by filing the instant Complaint on November 21, 2018 [ECF  
8 No. 1], asserting the same claims as before: that Defendants lacks standing to foreclose, Violation of 15  
9 U.S.C. § 1692, and Fraud (hereinafter “Third Complaint”). The 127-page pleading identifies defendants  
10 New Century Mortgage Company (“New Century”), U.S. Bank, Barclays, Western Progressive, and  
11 Ocwen, in connection with a Note and Deed of Trust. Plaintiff’s Third Complaint identifies a few causes  
12 of action – some general, some specific – then engages in conclusory allegations that specify neither  
13 which Defendant(s) acted, nor which particular violations occurred. Attached to the Third Complaint are  
14 voluminous exhibits that do little to clarify his claims.

15 Plaintiff’s main contention appears to be an allegation that the assignment of the Deed of Trust  
16 from New Century, through Barclays, to U.S. Bank was invalid due to New Century’s bankruptcy  
17 proceeding filed in 2007. *See* Third Complaint, p. 9, ¶¶ 30-31. Plaintiff claims that, based on this  
18 supposed “invalid” assignment, the ongoing efforts to foreclose upon the subject property are without  
19 authority and are therefore invalid. Plaintiff extends this allegation, then, to contend that all Defendants  
20 have been acting in concert to deprive him of his rightful property. In essence, Plaintiff failed to fulfill his  
21 obligations as mortgagor and now *for the third time* seeks to pass the consequences of his failure on to  
22 the loan servicer and lender. This is nothing more than an attempt by Plaintiff to keep his home without  
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1 having to satisfy his duties under the Note and Deed of Trust. **None of Clark's claims can be**  
 2 **maintained against the Defendants in this matter.**

3 On December 21, 2018, Barclays moved for dismissal on the following grounds: **First, Clark**  
 4 **lacks standing to challenge the Assignment, and even if he did have standing, there is no legal basis**  
 5 **to do so.** [ECF No. 8.] **Second, Clark's claims fail because they are either time-barred or fail to**  
 6 **meet the pleading requirements.** *Id.* And, **finally, Clark's claims are barred by claim preclusion.** *Id.*  
 7 Defendants joined in the Motion to Dismiss filed by Barclays on December 21, 2018 [ECF No. 9].

8 Plaintiff's Opposition to Barclay's Motion and Defendants' Joinder fails to refute any of the  
 9 arguments contained in the Motion to Dismiss. Despite claims that Plaintiff's Third Complaint lacked  
 10 specificity and clarification, Plaintiff failed to supplement his pleadings with any factual bases for his  
 11 claims. Plaintiff failed to clarify any of his claims with the proper elements and/or tests, and did not  
 12 specify or qualify any of his claims. Plaintiff instead used his Opposition as a platform to reiterate his  
 13 Third Complaint, and even "double down" on facts that are contrary to the record in this case. Plaintiff  
 14 seeks to have Defendants and this Court employ guesswork to evaluate his claims for relief, and leaves  
 15 the reasoning and legal analysis to others. Because Plaintiff fails to meet his burden in bringing these  
 16 claims, and because Plaintiff fails to refute the arguments raised by Defendants, Plaintiff's Third  
 17 Complaint should be dismissed in its entirety, with prejudice.  
 18

19 Accordingly, because Plaintiff has failed to adequately plead his claims and his claims are  
 20 baseless, a stay of discovery is justified as stated herein.  
 21

22 **II. ARGUMENT**

23 District courts have broad discretion to stay discovery. The Supreme Court has recognized that  
 24 discovery should not be permitted until a plaintiff has stated a viable cause of action. *Ashcroft v. Iqbal*,  
 25 556 U.S. 662, 679 (2009) ("Rule 8 marks a notable and generous departure from the hyper-technical,  
 26

1 code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed  
 2 with nothing more than conclusions.”) And the Ninth Circuit has found that, when faced with a motion to  
 3 dismiss, the “sounder practice [is] to determine whether there is any reasonable likelihood that plaintiffs  
 4 can construct a claim before forcing the parties to undergo the expense of discovery.” *Rutman Wine Co.*  
 5 *v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9<sup>th</sup> Cir. 1987). The *Rutman* court also stated that the  
 6 “purpose of Fed. R. Civ. P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of  
 7 complaints without subjecting themselves to discovery.” *Id.*

8       Staying discovery in this action is appropriate given the high probability that Defendants will  
 9 prevail on the Motion to Dismiss. *See Clemons v. Hayes*, No. 10-011, 2011 WL 2112006, at \*4 (D. Nev.  
 10 May 26, 2011) (granting motion to stay discovery where it appeared “unlikely” that the plaintiff’s claim  
 11 would survive a motion to dismiss); *Buckwater v. Nev. Bd. Of Med. Exam’rs*, No. 2:10-cv-02034-KJD-  
 12 GWF, 2011 WL 841391, at \*3 (D. Nev. Mar. 7, 2011) (finding that “it appears probable” that the  
 13 defendant’s motion to dismiss would be granted and therefore staying discovery). As detailed in Barclays  
 14 Motion to Dismiss, Plaintiff’s claims are deficient both because they fail to state a claim upon which  
 15 relief can be granted and they fail under the basic pleading standard of Fed. R. Civ. P. 8. Engaging in  
 16 discovery on a factually deficient complaint would unnecessarily burden the Defendants.  
 17

18       Prior courts have recognized this burden and the deficiencies in Plaintiff’s pleadings. Indeed,  
 19 Judge Ferenbach granted Defendants’ request for a stay of discovery with respect to Plaintiff’s Second  
 20 Complaint while the Motion to Dismiss was pending. *See Exhibit A*. The same concerns exist in the  
 21 Plaintiff’s Third Complaint, which asserts the same causes of action. Accordingly, the same result is  
 22 requested by Defendants - that the Court stay discovery while the Motion to Dismiss is pending.  
 23  
 24       ///  
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### **III. CONCLUSION**

The Court should grant Defendants' Motion to Stay Discovery and issue a protective order staying discovery until such time as the Court has rendered a decision on the Motion to Dismiss (ECF No. 8).

DATED this 15<sup>th</sup> day of February, 2019.

## WRIGHT, FINLAY & ZAK, LLP

/s/ Lindsay D. Robbins

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Christopher A.J. Swift, Esq.

Nevada Bar No. 11731

Lindsay D. Robbins, Esq.

Nevada Bar No. 13474

7785 W. Sahara Ave., Suite 200

Las Vegas, Nevada 89117

*Attorneys for Defendants,*

*as Trustee for MASTR Asset Backed Securities*

## *HE5 Mortgage Pass-Thru*

*LLC Mortgage Pass Thru, LLC, Servicer, Series 2008-1125  
(incorrectly identified in Plaintiff's Complaint as "US Bank,  
National Association"), Western Progressive – Nevada,  
Inc.; and Ocwen Loan Servicing, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 14th day of February, 2019, a true and correct copy of this **MOTION TO STAY DISCOVERY** was transmitted electronically through the Court's e-filing electronic system to the attorney(s) associated with this case and/or served by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

Alfred Clark  
5613 Harmony Ave.  
Las Vegas, NV 89107  
Liteone62@yahoo.com

/s/ Tonya Sessions  
An Employee of WRIGHT, FINLAY & ZAK, LLP

## **EXHIBIT LOG**

Exhibit A	Order Granting Motion to Stay
Exhibit B	Order Granting Motion to Dismiss